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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,234	12/31/2003	Shigeo Yaguchi	1760.1001	7113
21171	7590	05/12/2009		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER	
			BUL VY Q	
			ART UNIT	PAPER NUMBER
			3773	
			MAIL DATE	DELIVERY MODE
			05/12/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,234

Applicant(s)

YAGUCHI, SHIGEO

Examiner

Vy Q. Bui

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22, 24-25, 28, 31-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Election/Restrictions

Claims 22, 24-25, 28, 31-34 for elected invention as shown on Fig. 1-2 are further examined.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 22, 24-25, 31-32 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Ley-5,514,076.

As to claims 22, 31-32, Ley-5,514,076 (Fig. 13) discloses an retractor device including linear handle portion 11 of a metal or a polymeric material (col. 6, ll. 25-28), end of said rod 19 of a superelastic material/shape memory alloy (col. 7, ll. 19-25) including an extension formed at the free portion of the end 19, the extension includes 2 linear tips 20 diverging from end 19 and each tip has a free terminus 21.

As to claims 24-25, linear tips diverge from end 19 to form an angle between two linear tips upward and downward/leftward or rightward (depending on a reference frame).

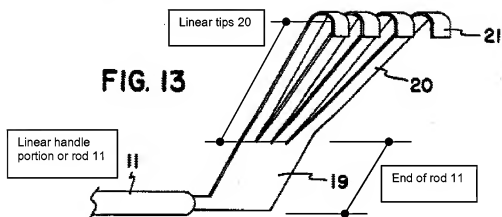
As to claim 34, rod handle 11 can be made of a metal (col. 6, ll. 25-28) and shown as thicker than end of said rod 19, which is made from a metal sheet. Inherently, handle 11 is more rigid than extension 19.

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Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ley-5,514,076.

As to claim 33, Ley-5,514,076 does not explicitly disclose the pad width in the range from 1mm to 15 mm. However, sizing or dimensioning a device to fit the application of the device is considered as within level of one of ordinary skill in the art. It would have been obvious to one of ordinary skill in the art to make a Ley-5,514,076 device to have the dimension as recited in the claim to fit the application of the device as an ophthalmic device.

2. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Householder-5,290,292 in view of Barot-5,807,244.

As to claim 34, Householder-5,290,292 does not explicitly disclose the extension 19 of sheet metal is more flexible than metal handle 11. However, it would be obvious to one of ordinary skill in the art to provide more rigid handle 11 for easy handling of the device and more flexible extension 19 formed by metal sheet to avoid injuring to the tissue of a patient.

3. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ley-5,514,076 in view of Grieshaber et al.-5,716,328.

Ley-076 discloses substantially the claimed invention, except for a second opposite end of the rod is bent relatively to the linear portion of the handle and the rod second opposite end includes a positioning stopper. However, Grieshaber et al.-5,716,328 (Fig. 5 and 8) discloses a

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medical retractor for eyes having 2nd opposite bent with a stopper 35 for use as a retractor for an eye. It would have been obvious to one of ordinary skill in the art to make a Ley-5,514,076 device bent with a stopper similar to stopper 35 of Grieshaber et al.-5,716,328 so that Ley-5,514,076 device can be used for an eye.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/

Primary Examiner, Art Unit 3773